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*Automatic Sprinkler Appeals Board*

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**Docket # 2006-188**  
**One Eighth Street, Pier 6**  
**Charlestown, MA**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Boston Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Tavern on the Water, hereinafter referred to as the Appellant.

**B) Procedural History**

By written notice dated October 11, 2006 and received by the Appellant on the same date, the Boston Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at One Eighth Street, Pier 6, Charlestown, MA. The Appellant filed an appeal of said order on November 21, 2006. The Board held a hearing relative to this appeal on September 12, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Attorney Charles Cremens and Brad Dalbeck, Owner of Tavern on the Water. Captain David Cushing and nightclub Inspector Ron Ingemi appeared on behalf of the Boston Fire Department. The Appellant's attorney indicated that he was representing the interests of both the owner of the building and the business.

Present for the Board were: Chief Thomas Coulombe, Acting Chairman; Alexander MacLeod; Peter Gibbons; John J. Mahan; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the enforcement action of the Boston Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Authorization from Bldg. Owner to allow Appellant to Represent Interests
3. Statement in Support of Appeal
4. Order of Notice of the Boston Fire Department
5. Notice of Pre-Hearing Status Conference to the Parties
6. Notice of Hearing to Appellant
7. Notice of Hearing to the Boston Fire Department
8. Seating Configuration
- 8B. Floor Plan
- 8C. Magazine Article on Restaurant
- 8D. Menu
- 8E. Sales Records
- 8F. Common Victualer's License
- 8G-W. Photographs
- 8X. Letters in Support from Neighbors (1-3)
- 9A. Assembly Permit
- 9B. Inspection Certificate
- 9C. Entertainment License
- 9D. Alcohol License
- 9E. Website
- 9F. Website listing of hours of operation
- 9G. Photograph of Exterior
- 9H. Photograph of Exterior
- 9I-X. Photographs
10. Floor Plan submitted by the fire department

**E) Subsidiary Findings of Fact**

- 1) By written notice dated October 11, 2006 and received by the Appellant on the same date, the Boston Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at One Eighth Street, Pier 6, Charlestown, MA in accordance with the provisions of M.G.L. c. 148, s.26G½. This building is used by an establishment that operates under the name of "Tavern on the Water", a private, for profit organization.
- 2) According to the current Certificate of Inspection issued for 2005-2006, the City of Boston Inspectional Services Department listed the facility's capacity as 325 persons throughout the facility, with a listed occupant capacity of 200 persons for the first floor and 125 persons for the second floor. Said Certificate of Inspection classifies the establishment as a

“restaurant/clubhouse.” An assembly permit, with an expiration date of 6-30-07 indicates identical occupant capacity limits.

- 3) Photographs and floor plans submitted, depict a waterfront establishment, built of steel and glass construction, consisting of multiple levels. It features both indoor and outdoor (seasonal) accommodations, which overlook Boston Harbor. According to the floor plan, the first level consists of a small bar area that features a bar with 8 bar stools. There are 10 additional bar stools at a stand-up counter against one wall. Adjoining this first level bar area is an outdoor porch area that features 9 tables and seating for 15 additional standees at another counter. The second level features a larger bar consisting of approximately 18 bar seats and 7 tables with chairs. This area leads out to another outside/porch area that features seating at another counter with approximately 25 stools.
- 4) Submitted photographs depict an establishment with a relaxed, informal, nautical setting. There are also several signs, ornaments, artwork and banners displayed within and outside the establishment that promote various types of alcoholic beverages. One photograph depicts three signs located near the front door sidewalk that read: “Pier Bar”. A large awning over the front façade of the building states in bold, the name of the business “Tavern on the Water”.
- 5) The establishment has been issued a full liquor license and an entertainment license. The entertainment license allows the establishment to feature instrumental/vocal music not to exceed three live performers, disc jockey and Karaoke. The license includes a condition that the live entertainment must cease at 11:00 p.m. The establishment features four flat screen (32”) televisions for customer viewing located in the bar, waiting, areas. There is no dance floor.
- 6) A restaurant review describes the facility as having “spectacular views and lengthy menu” and calls the facility a “dockside cafe”. The menu features a wide assortment of food items, including such items as “chicken fingers” and entrees like “ahi tuna”.
- 7) The Appellant contends that his establishment is principally used as a 325-person full service restaurant and is therefore specifically exempt from the sprinkler provisions of M.G.L. c.148, s. 26G½. He also indicated that 200 of this capacity are located outside, thus supporting his conclusion that the establishment is seasonal. Furthermore, he indicated that the ratio of food sales compared to liquor sales is approximately 58% to 42% and that the establishment serves full meals on a daily basis. According to submitted web information the business features the availability of a wide assortment of full course dinner meals available until 11:00 p.m. on Friday and Saturday nights; 10:00 p.m. on Tuesday through Thursday and 9:00 p.m. on Sundays and Mondays. Appellant indicated that the “bar areas” are also used for the service of meals. However, a customer can patronize these areas, as well as both seated tables and standing counters, for the purchase of liquor only at any time during the hours of operation.

There was conflicting testimony about the hours of operation. Apparently the liquor license allows the service of alcohol until 1:00 a.m. The entertainment license generally also allows entertainment until 1:00 a.m. However, the Appellant indicated that the establishment is never open until 1:00 a.m.

- 8) While the facility holds an entertainment license, the Appellant indicates that no entertainment is currently held inside except for piped in satellite music. There is no dance floor.

- 9) The Appellant did not present any technical issues relative to a sprinkler installation, partial system or modifications thereto for the board's review. Similarly, the fire department did not raise such an issue.
- 10) The fire department issued the Order to install sprinklers based upon the overall building capacity, the existence of a full bar and lounge areas, liquor sales and an entertainment license. The representative of the fire department further indicated the establishment, although serving significant meals on a regular basis, transforms into a "bar-like " atmosphere after dinnertime, particularly during comfortable outdoor weather months.
- 11) Photographs submitted by the Fire Department depict features clearly indicating a significantly concentrated occupancy with many standees in and around the bar areas (standup counter areas) and essentially throughout the facility consuming significant quantities of alcoholic beverages. None of the people depicted in the photographs are eating food. One of the photographs depicts a sign next to an outdoor bar advertising "Calypso Music". The representative of the Department indicated that the photographs were taken on two separate occasions at approximately 12:00 midnight on a weekend evening. He stated that he is familiar with this establishment and that these photographs are typical of a warm/fair weather weekend evening.
- 12) The Fire Department's representative expressed concerns regarding the existence of large outdoor patio/ porch areas that do not have listed occupancy capacity. The secondary egress from these areas appears to be through the interior of the building. It was the fire department representative's opinion that there was the potential for a crowding situation in interior egress areas in an emergency situation involving the need for quick exit. Additionally, there was the potential for concentrated occupancy in interior areas if the persons who are out on the patio may crowd into the facility in the event of inclement weather. However, the Appellant indicated that there are three exits from the outdoor patio, which are separate from those exits from the building.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: " every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) The Inspection Certificate issued by the City of Boston for the "Tavern on the Water" for 2005-2006, indicates that the occupancy is classified as a "restaurant/clubhouse" with a total capacity

of 325 persons. Clearly, the subject building is considered a public assembly with a capacity of 100 persons or more.

- 4) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law, c.148, s. 26G½. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February, 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:
- a) No theatrical stage accessories other than raised platform;
  - b) Low lighting levels;
  - c) Entertainment by a live band or recorded music generating above-normal sound levels;
  - d) Later-than-average operating hours;
  - e) Tables and seating arranged or positioned so as to create ill defined aisles;
  - f) A specific area designated for dancing;
  - g) Service facilities primarily for alcoholic beverages with limited food service; and
  - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s. 26G½. It was noted that the list of characteristics were not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination, depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 5) In reviewing the current characteristics of this establishment, it appears that this facility currently does not feature sufficient “A-2 like” characteristics to support a finding that the facility is a “nightclub, dancehall or discotheque...” as those terms are used in the statute. The facility has a somewhat limited live entertainment license and there is no evidence that indicated regular or routine live or recorded musical entertainment or that said music is produced at above normal sound levels. Additionally, there is no dance floor and the establishment has significant food service.

However notwithstanding the current lack of A-2 like characteristics typical of a nightclub, dancehall or discotheque, the statute also clearly applies to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.

6) Although this facility clearly has features of a restaurant, it also includes characteristics found in a bar. In its 1-10-05 memorandum, the Board acknowledged the existence of establishments that may feature characteristics of both a restaurant and a bar or nightclub. In determining whether or not such “combination” establishments are subject to the provisions of M.G.L. c. 26G½, this Board looked at such common sense factors such as:

- a) Does the restaurant establishment regularly and routinely serve meals on a daily basis?
- b) Does the establishment provide a bar, bar seating, bar standing and a bartender for the purposes of serving alcoholic beverages directly to alcohol consuming customers?
- c) Does the bar and bar seating area have the ability to expand into the dining area to accommodate special entertainment activities or increased capacity/density.
- d) If the establishment provides a bar and bar seating, are alcoholic beverages continuously served to customers more than one hour after full kitchen facilities have been closed?
- e) Is live or recorded music provided for dancing purposes or for a viewing audience? (does not include background dinner music)?
- f) Does the establishment provide special entertainment, including but not limited to: musical, theatrical, comedy, or sport viewing activities?
- g) Based upon the establishment’s name, décor, atmosphere, does a customer expect a bar or nightclub type establishment?
- h) Is the establishment or portions thereof routinely or regularly used for private or public functions for dancing, parties, celebrations, entertainment or performance purposes?
- i) Does the establishment have an entertainment license?

7) Based upon the evidence provided at the hearing, this establishment currently serves meals on a daily basis. However, in looking at the factors as a whole, it also features substantial characteristics typical of both a bar and a nightclub, including:

- a) The use of the words “club house” and “restaurant” on the Certificate of Occupancy, which appears to allow usage characteristics more than those of a mere restaurant. The existence of an entertainment license allows the establishment to legally feature live entertainment, although limits it to a three-piece band. Although the Appellants indicated that live music currently does not occur in the facility, apparently it does, as evidenced by a sign advertising “Calypso Music” found in a photograph of the main entrance of the establishment.

- b) The establishment features, on a regular basis, operating hours later than those of a facility that is principally a restaurant. Although the Appellant indicated that the establishment never stays open until 1:00 a.m., the establishment's liquor license legally allows the establishment to serve liquor until 1:00 a.m. Additionally, The representative of the Department indicated that the submitted photographs were taken on two separate occasions at approximately 12:00 a.m. on a weekend evening. The photographs clearly show an establishment in full and active operation.
  - c) The establishment holds a full liquor license and features bar service, bar seating and a bartender at multiple locations, during all hours of operation, for the purposes of serving alcoholic beverages directly to alcohol consuming customers. Alcoholic beverages are available to customers at all times, whether or not they choose to eat a meal or not.
  - d) Based upon the establishment's name and presentation to the general public, a customer can reasonably expect a "bar" type establishment. The interior features a décor and atmosphere typical of a bar or pub. The areas within the establishment consist of a variety of seating arrangements including a fully stocked bar with bar stools, high wall mounted stand-up tables with high stools in addition to wooden tables and booths with chairs and benches. Such seating or standing accommodations are located both inside the establishment and on the outside porches. Submitted photographs depict an establishment with a relaxed, informal, nautical setting. There are also several signs, ornaments, artwork and banners displayed within and outside the establishment that promote various types of alcoholic beverages. One photograph depicts three signs located near the front door sidewalk that read: "Pier Bar". A large awning over the front façade of the building states in bold the name of the business "Tavern on the Water". These factors indicate an establishment that, in addition to restaurant offerings, is clearly marketed to attract customers who seek bar like activities and surroundings. This conclusion is further supported in photographs submitted by the Fire Department. The photographs clearly depict a significantly concentrated occupancy with many standees in and around the bar areas, standup counter areas throughout the facility, obviously consuming alcoholic beverages. None of the people depicted in the photographs are eating food.
  - e) The establishment derives a significant portion of its revenue (at least 42%) from the sale of alcoholic beverages.
- 8) Appellant's position that this establishment is "principally a restaurant" and therefore exempt from the provisions of M.G.L., s. 26G½ is without merit. Although the facility currently provides a wide assortment of food items typical of a restaurant, this facility, as its name, "Tavern on the Water" implies, is clearly designed, used and marketed as an establishment that also features a significant number of characteristics that are typical of a bar and is therefore within the scope of M.G.L. c. 148, s. 26G½, as interpreted by this Board.

## G) Decision

For the foregoing reasons, this Board unanimously **upholds** the Order of the Boston Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½ in accordance with the following timetable

Plans for the installation of an adequate sprinkler system shall be submitted to the Head of the Fire department not later than 90 days from the date of this decision.

Installation shall be completed by November 15, 2008.

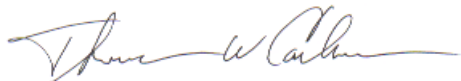
**H) Vote of the Board**

Chief Thomas Coulombe, Acting Chairman	In Favor
Alexander MacLeod	In Favor
Peter E. Gibbons	In Favor
John J. Mahan	In Favor
Aime R. DeNault	In Favor
George A. Duhamel	In Favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Chief Thomas Coulombe, Acting Chairman

Dated: November 1, 2007

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:**

Brad Dalbeck  
c/o Tavern on the Water  
One Pier 6  
Eighth Street  
Charlestown, Massachusetts 02129

Captain David Cushing  
Boston Fire Department – Fire Prevention  
1010 Massachusetts Ave, 4<sup>th</sup> Floor  
Boston, Massachusetts 02118